

COMMONWEALTH OF MASSACHUSETTS**APPELLATE TAX BOARD****5'S ENUF, LLC****v.****BOARD OF ASSESSORS OF
THE TOWN OF MONTEREY**

Docket No. F324385

Promulgated:
May 22, 2018

This is an appeal filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Monterey ("assessors" or "appellee") to abate a tax on certain real estate owned by and assessed to 5's Enuf, LLC ("appellant" or "LLC") under G.L. c. 59, §§ 11 and 38, for fiscal year 2014 ("fiscal year at issue").

Commissioner Chmielinski heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Good joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

George M. Cain, general manager, for the appellant.

Stanley Ross, chairman of the assessors, and *Robert Lazzarini*, member of the assessors, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2013, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of an 8.861-acre parcel of real estate improved with a single-family residence located at 9 Heron Pond Park in Monterey ("subject property"). For assessment purposes, the subject property is identified on the assessors' map 212 as lot 007.

For fiscal year 2014, the assessors valued the subject property at \$1,350,000 and assessed a tax thereon, at the rate of \$6.08 per thousand, in the total amount of \$8,208. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On January 25, 2014, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which was deemed denied on April 25, 2014. On June 27, 2014, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property is one of only 5 properties situated on a dirt road within a developed community interconnected by private, deeded rights-of-way, which abuts 300 acres of preserved woodlands to the southeast and the Tyringham Valley (the "valley") to the north. The subject property is improved with a 2-story, custom-built, contemporary-style residence ("subject dwelling").

Built in 1999, the subject dwelling has 3,690 square feet of finished living area with a total of 10 rooms, including 4 bedrooms, as well as 2 full bathrooms, 2 half-bathrooms, and 1 three-quarter-bathroom. The dominant feature of the subject dwelling is the great room with its cathedral ceiling and stone fireplace that rises 25 feet above the floor. The north wall of the great room has 10 architectural windows and French doors that provide sweeping views of the valley. Additional amenities include a second-story catwalk, which overlooks the great room and connects the west-side and east-side bedrooms; a partially finished walkout basement, which includes a bedroom, a bathroom, a family-room, and a mechanical room; central air conditioning; central vacuum; a 1,669-square-foot rear deck; an attached 3-car garage; and, a 2-car detached garage with a second-story, unfinished area. Many of the house functions, including lights, heat, alarm, and door locks are remote controlled with the controls located in the mechanical room. The assessors list the

subject dwelling on the property record card as being in superb condition and assigned a grade of AA.

In support of its case that the subject property was overvalued for the fiscal year at issue, the appellant relied on the testimony of George M. Cain, general manager of the LLC and resident of the subject property, and also offered into evidence several documents, including: a history of the subject property's assessments dating back to fiscal year 2004; a listing of the Heron Pond Park neighborhood assessed values for the fiscal year at issue; the Multiple Listing Service ("MLS") listing for 72A Brett Road, which sold on March 27, 2015 for \$1,100,000; and copies of 5 appraisal reports, which were prepared between July 5, 2013 and August 11, 2016.

With respect to the listing of assessments for the neighboring properties located on Heron Pond Park, the appellant failed to provide any description of these properties or establish comparability with the subject property. Regarding the appellant's purportedly comparable-sale property located at 72A Brett Road, although there were numerous differences between the subject property and the appellant's purportedly comparable-sale property - including lot size, finished living area, amenities, and building grade - the appellant did not suggest any adjustments to the purportedly comparable-sale property's selling price to account for those differences. The appellant

also failed to make an adjustment for time or market condition to account for the fact that this property sold more than 2 years after the relevant assessment date.

Lastly, the appellant offered into evidence 5 appraisal reports that were prepared by several different appraisers, none of whom were present at the hearing of this appeal.

For their part, the assessors relied on the testimony of Stanley Ross, chairman of the assessors, and also the introduction of several exhibits, including: the subject property's property record card for the fiscal year at issue; the property record card for 72A Brett Road for the fiscal year at issue; photographs of the subject property's exterior; a written description of the assessors' method of assessing building grade and its application to the subject dwelling; and, an appraisal report prepared by an appraiser who was not present at the hearing of this appeal.

Mr. Ross testified that he inspected the subject property's exterior and interior on multiple occasions and, based on the subject property's construction and architectural and aesthetic elements, the subject property was assigned a building grade of AA Superb. Mr. Ross also argued that the sale of 72A Brett Road was not a qualified sale because the seller was a dying man who was eager to sell his property. However, the assessors failed to provide any substantiating evidence.

On the basis of the evidence presented, the Board found that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal year at issue. The Board found that the appellant's listing of assessments for neighboring properties on Heron Pond Park, which failed to provide any description of the properties or make adjustments for differences with the subject property, offered little credible evidence of the subject property's fair market value for the fiscal year at issue. Similarly, the Board found that the appellant's introduction of the MLS listing for 72A Brett Road, without any adjustments to account for obvious differences with the subject property or an adjustment for time or market conditions to account for the fact that the purportedly comparable property sold more than 2 years after the relevant date of assessment, failed to provide reliable evidence of value.

Further, the Board found that the appellant's real estate appraisal reports, as well as the appraisal reports offered by the assessors, were of limited evidentiary value because they were prepared by appraisers who were not present at the hearing of this appeal and were, therefore, unavailable for cross-examination by the assessors or questioning by the Board.

The Board therefore found and ruled that the appellant failed to meet its burden of proving that the subject property

was overvalued for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the subject property had a lower value than that assessed. “‘The burden of proof is upon the [appellant] to make out its right as a matter of law to abatement of the tax.’” ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). “[T]he board is entitled to ‘presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.’” ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245)).

In appeals before this Board, a taxpayer “‘may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors’ method of valuation, or by introducing

affirmative evidence of value which undermines the assessors' valuation.'" **General Electric Co.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

"[S]ales of property usually furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 682 (1982). Sales of comparable realty should be within the same geographic area and within a reasonable time of the assessment date to be probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107 (2008). Moreover, when comparable sales are used, allowances must be made for various factors which would otherwise cause disparities in the comparable properties' sale prices. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082 (and the cases cited therein).

Further, G. L. c. 58A, § 12B provides, in pertinent part, that "at any hearing relative to the assessed fair cash valuation or classification of property, evidence as to fair cash valuation or classification of property at which assessors

have assessed other property of a comparable nature or class shall be admissible." Thus, evidence of assessed values must relate to properties that are comparable to the subject property, i.e., properties that share "fundamental similarities" with the subject property, including similar age, location, and size. See **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004). Moreover, "without appropriate adjustments . . . the assessed values of [comparable] properties [do] not provide reliable indicator[s] of the subject's fair cash value." **Lupacchino v. Assessors of Southborough**, Mass. ATB Findings of Fact and Reports 2008-1253, 1269.

In the present appeal, the appellant contended that the subject property was overvalued for the fiscal year at issue. In support of its case, the appellant offered into evidence the MLS listing for a property located in Monterey that sold in 2015, but failed to make any adjustments for differences that existed between the subject property and the purportedly comparable-sale property. The appellant also provided a listing of the assessments for the neighboring properties situated on Heron Pond Park. With respect to these properties, the appellant failed to provide a description of the properties or draw any meaningful comparison to the subject property and establish comparability. Moreover, the appellant failed to make any adjustments between the subject property and the purportedly

comparable-assessment properties. Absent the establishment of basic comparability and appropriate adjustments, the Board found that the appellant's comparable-assessments and comparable-sales data did not provide a reliable indicator of the subject property's fair cash value for the fiscal year at issue. "Adjustments for differences in the elements of comparison are made to the price of each comparable property The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property." APPRAISAL INSTITUTE, *THE APPRAISAL OF REAL ESTATE* 322 (13th ed., 2008). The Board also found that the actual sale price of the purportedly comparable-sale property at 72A Brett Road, which occurred more than 2 years after the relevant date of assessment, was likely too remote to provide meaningful evidence of the subject property's fair market value for the fiscal year at issue. **Frederick D. Lewis, et ux v. Assessors of Lowell**, Mass. ATB Findings of Fact and Reports 2015-182, 186.

Lastly, the appraisal reports prepared by different appraisers included sales-comparison analyses of the subject property. However, none of the appraisers testified at the hearing nor were they available for cross-examination by the appellee or for questioning by the Board. The Board therefore considered their opinions contained in the appraisal reports to

be unsubstantiated hearsay. **Ward Brothers Realty Trust v. Assessors of Hingham**, Mass. ATB Findings of Fact and Reports 2012-515, 525 (rejecting opinion of value contained in an appraisal report as hearsay where author of the report did not testify at hearing).

On the basis of the evidence presented, the Board found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board